IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL.

Writ Petition No. 273 (M/S) of 2004

Gopal Sharma and
Another ……Petitioners

Versus.

District Judge, Haridwar
And 4 others … Respondents

Hon. Rajesh Tandon J.

By the present writ petition, the petitioners have prayed for a writ of certiorari for quashing the order dated 31.03.2004, by which the appeal under section 22 of the U.P.Act No. XIII of 1972 has been allowed.

Briefly stated, the landlords-respondents nos. 2 to 5 have filed a release application under section 21(1)(a) of the U.P.Act No. XIII of 1972 praying for the release of the property situated at village Maijel Makan, Khubchand Chandani Building, Bhalla Road, Bishnughat, Haridwar.

According to the case of the landlord-respondents, the property was purchased by them on 04.02.1993 and since then they have become owners of the property. The petitioners are the tenants @ Rs. 60/- per month apart from taxes. After purchasing the aforesaid property in February, 1993, the landlords have orally informed the petitioners in February, 1993, and thereafter on 21.041998, a registered notice was also sent stating therein that they have purchased the property and requested also to the petitioners to vacate the premises within period of six months.

The respondent-landlords have submitted that respondent no.2 Gaila Ram in possession of the two tenanted rooms. It was stated that the family of respondent no.2 consists of self, his wife Smt. Karm Devi, his son Devendra Kumar, his daughter-in-law smt. Poonam and his grand-son and two grand-daughter. They also submitted that the property where the respondent no.2 is residing, is a tenanted property situated in Niranjani

Akhara, Mayapur, Haridwar, and the premises consisting of to rooms is hardly sufficient to cater the requirements of family members.

The landlords have further stated that Lila Krishna and Smt. Santosh Rani are also co-owners of the premises. Yogesh is the son of Lila Krishna. Nitin and Hemant are his other sons and there is one daughter Km. Uma, and as such the premises in dispute is required for the family members of the landlords (applicants 2, 3, 4 and5).

So far as the applicant no. 4 Yogesh Kumar is concerned, he is going to be married, therefore, the premises at the place of the father Leela Krishana is hardly sufficient for the residential purpose.

Landlords-respondents have also stated in paragraph 10 of their application that the petitioner no.1 is serving in the hospital and doing Government job and has been given Government quarter and the family of the petitioners are residing comfortably and the present premises is not being utilized by the petitioners.

The petitioners have contested the application 21(1)(a) of the Act and in the reply of paragraph 10 of the application u/s 21(1)(a) of the Act No. XIII of 1972, it has been admitted that the small quarter has been allotted to her husband. However, it has been stated that lateron the same has been allotted to different doctor after his retirement. The petitioners have also admitted in paragraph 12 of his written statement that Gaila Ram is residing in a rented house in Niranjani Akhara, Mayapur, Haridwar. So far as respondent nos. 3, 4 and 5 are concerned, it was further admitted that they are residing at Brahmpuri, Haridwar.

The prescribed Authority vide his order dated 24.08.2002 has rejected the application. Aggrieved by the aforesaid order, the landlords went in appeal. The Appellate Court has allowed the appeal vide order dated 31.03.2004.

A perusal of the record shows that on behalf of the landlords, documents which were filed i.e. paper no. 55C (notice dated 21.4.1998), 59-C (photo copy of the sale-deed), etc. Landlords have also filed the affidavits in support of their requirement. While discussing their requirement, the Prescribed Authority has observed that the landlords Gaila Ram is residing in a rented house. The finding of the prescribed Authority is that he should have submitted copy of the assessment showing that how much accommodation the landlord has available with him. So far as the other petitioner Lila Krishna, Smt. Santosh Rani and Yogesh Kumar are concerned, the Prescribed Authority has observed that they are residing in a joint family property and due to paucity of the accommodation, it is not possible to marry Yogesh Kumar one of the co-owners. Lateron, the prescribed Authority has observed that during the pendency of the case Sri Yogesh Kumar was married as well vide paper no. 65-C, the invitation card showing that he was married on 29.11.2001 at 315 Vaishnav Kutir, Degree College Road, Govindpuri, Haridwar. Paper no. 62-C is the affidavit filed by Lila Krishna which shows that they are in all five brothers and all are residing at Brahmpuri, house belonging to his father. Paper no. 53-C is the affidavit of Gaila Ram, who has also deposed that Lila Krishna any how is residing at the house of his father, and all the brothers are jointly occupying the house. The rejoinder affidavit has also been field by Gaila Ram paper no. 17 C showing his requirement.

On appeal, the Appellate Court has considered the requirement of the landlord. The Appellate Authority has considered the *bona fide* requirement of the landlords. He has recorded a finding with regard to *bona fide* need of the landlord to the effect that Yogesh Kumar requires the premises for his use and occupation.

The petitioner Smt. Neelam Sharma has taken the defence that she is residing all alone from her husband as during the pendency of the case, there had been a dispute with her husband and she is residing separately. The said fact had neither been established, nor there is any evidence to that effect, as such there is no substance in the said plea and, therefore, the said plea is

being rejected. The Appellate Authority has recorded a finding that Yogesh Kumar requires the premises.

However, the Appellate Authority has not considered the requirement of other co-owners, who have stated that one of the co-owners, is residing in a the tenanted premises of two rooms only. There is no reference in the appellate orders so far as other co-owners are concerned. Further, there is no reference with regard to the fact that the accommodation where the other co-owners are residing, is not sufficient to cater the requirements of family members.

So far as the finding of the Appellate Court so far as the *bona fide* requirement of Yogesh Kumar is concerned, the same has been correctly recorded by the Appellate Court. As such, the finding of the Appellate Court with regard to requirement of Yogesh Kumar is confirmed. However, it is further observed that the Appellate Authority was required to record a finding on the requirement of the co-owners as well.

Counsel for the petitioner has submitted that the Appellate Authority has not recorded any finding with regard to the comparative hardship and the Appellate Authority was required to record a finding with regard to the *bona fide* need as well as comparative hardship, both.

So far as the bona fide requirement is concerned, the finding of the Appellate Authority that Yogesh Kumar requires the premises for his use and occupation as he is doing his business in the ground floor and the first floor is required for his use and occupation, I find no infirmity in the order passed by the Appellate Authority and, therefore, the findings of the *bona fide* need is confirmed.

So far as the comparative hardship is concerned, counsel for the petitioners has argued that since it was a judgment of non-affirmance, therefore, the Appellate Authority was required to record a finding with regard to the comparative hardship as well.

Proviso to section 21 (1)(a) of Act No. XIII of 12972 provides as under:

> "Provided also that the prescribed authority, shall, except in cases provided for in Explanation take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose have regard to such factors as may be prescribed."

As will appear from the aforesaid proviso that the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application alone has to be looked into after taking into consideration the factors as contained in Rule 16 (1)(a) of U.P.Act No. 13 of 1972. Relevant Rule 16(1)(a) reads as under:

> **"16. Application for release on the ground of personal requirement** [Sections 21(1)(a) and 34 (8)- (1) In considering the requirement of personal occupation for purposes of residence by the landlords or any members of his family, the prescribed Authority shall, also have regard to such factors as the following:-
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> (a) Where the landlord already has adequately and reasonable suitable accommodation having regard to the number of members of his family and their respective ages and his means and social status, his claim for additional requirement shall be construed strictly;"

In Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77 after following the decision of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387, it has been held that *bona fide* need is that foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word. So far as the fourth proviso is concerned, it has to be considered liberally in favour of the landlord, when the bona fide need for grant of release has been established. Moreso, when there has been inaction on the part of the tenant in searching for alternative accommodation by seeking allotment or otherwise.

Relying upon the judgment of Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, the Apex Court has observed that no doubt true that the tenant will have to be ousted from a house, if a decree of

eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

> "As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387, the bona fide need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word"…….
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> In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272:1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had evwer attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilized for shifting his business which was dwindling day be day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.
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> In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the filed which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.
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> The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under

section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

Rule 16 of Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and wanting in earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

"A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82 : 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his

failure to secure employment for himself, lends congency to his moving the present application."

In Sushila Vs. IInd Additional District Judge, Banda and others reported in 2003 SC and Full Bencha Rent Cases 109, the apex Court has held that Rule 16 cannot be the sole criteria or deciding factor to order or not the eviction of a tenant. Therefore, the apex Court has held that even after the consideration of Rule 16 of the rules framed under the Act, the balance tilts in favour of the unemployed son of the landlady, whose need had been *bona fide* and has also been so accepted by the respondents. The observations of the apex Court as quoted as under:

> "As observed earlier, it is clear the length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of the Rules, 1972 is the only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us."

Similar view has been taken in the case of Smt. Sarla Ahuja Vs. United India Insurance Co. Ltd. AIR 1999 SC page no. 103. It has been held the apex Court as under:-

> "When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord shows a prima facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bondafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

Once the bona fide need of the landlord has been established, comparative hardship, also tiltes in his favour.

Since in the present case, the Appellate Authority has not recorded in so may words with regard to comparative hardship, therefore, the matter is remitted to the Appellate Authority for recording the finding of comparative hardship alone.

There being no infirmity in the finding of the Appellate Court so far as the bona fide requirement of the landlord is concerned, therefore, the same is confirmed. Appellate Authority shall record a finding on the comparative hardship within three weeks from the date of the production of the certified copy of the order and shall pass suitable orders accordingly.

It is made clear that no further evidence shall be accepted on the question of comparative hardship except already available on record. The entire exercise shall be done within three weeks from the date of the production of the certified copy of this order.

Writ petition is partly allowed.

No order as to costs.

(Rajesh Tandon J.)
9.8.2004

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